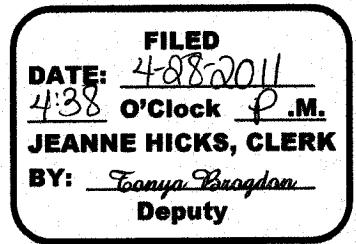


IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI



DIVISION PRO TEM B
HON. WARREN R. DARROW
CASE NO. V1300CR201080049

JEANNE HICKS, CLERK
BY: T. Brogdon, Deputy Clerk
DATE: April 28, 2011

TITLE:

COUNSEL:

STATE OF ARIZONA,

Yavapai County Attorney
By Sheila Polk
Bill Hughes
(Via OnBase)

(Plaintiff)

(For Plaintiff)

v.

JAMES ARTHUR RAY,

Thomas K. Kelly
(Via Electronic Mail)
(For Defendant)

(Defendant)

and

Luis Li/Brad Brian/Truc Do/Miriam Seifter
MUNGER TOLLES & OLSON LLP
(Via Electronic Mail)
(For Defendant *Pro Hac Vice*)

HEARING ON:
JURY TRIAL – DAY 35

NATURE OF PROCEEDINGS

COURT REPORTER
Mina Hunt

START TIME: 8:32 a.m.

APPEARANCES:

Sheila Polk, Counsel for State
Bill Hughes, Co-Counsel for State
Detective Ross Diskin, Case Agent
James Arthur Ray, Defendant
Tom Kelly, Counsel for Defendant
Luis Li, *Pro Hac Vice* Counsel for Defendant
Truc Do, *Pro Hac Vice* Counsel for Defendant

The Court, Counsel, Detective Diskin, and Defendant are present in the Courtroom.

Court and Counsel resume discussion of exhibits, addresses objections thereto and foundational issues. As to the packet of information, Counsel for Defendant moves to preclude all of that information as laid out in the Pretrial Motion in Limine and the numerous issues involved with many of the documents.

Counsel for Defendant addresses objections to exhibit 951, submits this has minimal relevance if any to the manslaughter charge and requests the entire document be precluded. Counsel argue their positions. The Court advises there is no foundation, is largely a hearsay type document, and is not going to permit its admission through Detective Diskin in this context.

Court and Counsel discuss exhibit 952, Counsel for Defendant stipulates all of this was found where Counsel for Plaintiff indicated as stated on the record. Counsel for Defendant stipulates the cabin was in the sole and exclusive control and possession of Mr. Ray. Counsel for Defendant makes avowal that this document was designed to be read after the sweat lodge. The Court addresses Rule 610. The Court advises this is something that has not been shown that was actually provided to the participants and is not going to be admitted through Detective Diskin.

Counsel for Plaintiff advises in light of the Court's rulings, if exhibits 961-965 become relevant or there is additional basis for their admissibility, they will be raised with the Court.

Court and Counsel discuss exhibit 966. Counsel for Defendant renews all previous objections to the admissibility of this document. The Court advises the prior rulings apply for this exhibit.

Court and Counsel discuss exhibit 960. Counsel argue their positions. The Court advises the same principals apply and it would not be admitted through Detective Diskin.

Court and Counsel discuss exhibit 928. Counsel argue their positions. The Court advises 403 issues are apparent and not knowing this is what actually happened, it's not admissible. Discussion ensues regarding 403 issues. The Court **finds** pursuant to 403 it does not have sufficient prohibitive value.

Court and Counsel discuss testimony of Detective Diskin and exhibits 932 and 933. Counsel for Defendant requests this court admonish the State of Arizona from making any type of statement or elude to any fact which would imply that somehow Mr. Ray was fleeing on October 9th. Counsel argue their positions.

Court and Counsel discuss photographs of the Defendants wallet and exhibit 932. Counsel for Defendant objects to the admission of exhibit 932. The Court advises omitting or redacting the identifying information on the wallet itself as long as it is not brought in with some misimpression would be admitted. Counsel for Defendant requests personal identifying information be redacted on the actual Court exhibit.

Court and Counsel discuss witness testimony, disclosure issues and prior Court rulings.

Counsel for Plaintiff requests the Court allow the State to bring in Dr. Kent who is a witness from 2008, and makes an offer of proof that Dr. Kent would testify that he was inside the sweat lodge in 2008, that he recognized what was going on around him were the signs and symptoms of heat related illnesses that would result in heat stroke. Counsel argue their positions. Counsel for Defendant submits if there is any credible or honest consideration of this request that this Trial has to be continued until these legal matters are resolved.

~~~Recess~~~

At 10:18 a.m. Court reconvenes, all previously appearing parties and the Jury are present.

Detective Diskin having been previously sworn, resumes testimony.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Exhibit 935 is admitted into evidence pursuant to stipulation of Counsel.

Counsel for Plaintiff presents two items of physical evidence in boxes for marking, **IT IS ORDERED** the boxes shall be marked. **IT IS FURTHER ORDERED** without objection, Exhibits 968 and 969 are admitted for demonstrative purposes with photographs substituted for the record.

Exhibit 309 is offered and admitted into evidence without objection.

Exhibits 328, 329, 339, 340, 541-546, 548, 549, 938-942, 949 and 950 are admitted into evidence pursuant to stipulation of Counsel.

The Jury is reminded of the admonition and excused for the noon recess.

~~~Noon Recess~~~

At 1:17 p.m. Court reconvenes, all previously appearing parties and the Jury are present.

During the recess, items within a box and several envelopes presented by Counsel for Plaintiff were marked as exhibits pursuant to the direction of the Court as advised by the Bailiff.

Detective Diskin resumes testimony.

Exhibits 970 and 981 are offered and admitted into evidence without objection for demonstrative purposes.

The Court advises when the actual physical exhibits are admitted, they are admitted for demonstrative purposes. A photograph will be substituted with its number and that will be the procedure throughout the case.

Court and Counsel discuss photographs of the actual exhibits.

With regard to exhibit 981, Counsel for Defendant requests there be no duplication and advises there is already a photograph into evidence. The Court advises there is an understanding that there will be a photograph that corresponds to each physical exhibit. The Court notes the physical exhibits are marked on the envelope or the container.

Exhibits 310 and 323 are admitted into evidence pursuant to stipulation of Counsel.

Counsel for Defendant advises they stipulate to the admission of exhibits 345 and 584.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

Counsel for Defendant advises they stipulate to the admission of exhibit 345.

The Jury is reminded of the admonition, excused for a recess and exits the Courtroom.

Court and Counsel discuss the line of questioning of Detective Diskin, Jury Instructions, Motion for Sanctions, and causation. Counsel argue their positions.

Counsel for Defendant advises pending before the Court are several cautionary instructions, requests the Court provide to the Jury as to the nature and purpose of this type of evidence, and that the Jury be instructed the State bears the burden. Discussion ensues.

~~~Recess~~~

At 3:04 p.m. Court reconvenes, all previously appearing parties and the Jury are present.

Detective Diskin resumes testimony.

Exhibits 312, 313 and 930-932 are admitted into evidence pursuant to stipulation of Counsel.

Court and Counsel conduct sidebar discussion outside of the presence of the Jury on the record.

The Jury is reminded of the admonition, excused for the evening recess and exits the Courtroom.

Court and Counsel discuss 1<sup>st</sup> and 5<sup>th</sup> amendment concerns, proposed line of questioning, proposed audios to be played, anticipated witness testimony, and prior sweat lodge events. Counsel argue their positions.

Counsel for Defendant stipulates to the exhibits that have been entered into evidence are true and correct copies of what Mr. Ray said at the spiritual warrior seminar. Counsel for Plaintiff accepts the stipulation.

With regard to audio, the Court advises if there are going to be portions offered the Court must be able to review them.

Counsel for Plaintiff withdraws their motion to introduce the audio. The Court advises the portions of the audio have to be provided to the Defense.

The Court stands adjourned for the day.

**END TIME: 4:38 p.m.**

cc: Gallagher & Kennedy, P.C., Counsel for Shore Family (e)  
Murphy, Schmitt, Hathaway & Wilson, PLLC, Co-Counsel for Brown Family (e)  
Stone & Magnanini, Co-Counsel Brown Family (e)  
Aspey, Watkins & Diesel, PLLC, Counsel for Neuman Family (e)  
Steptoe & Johnson, Counsel for KPNX Broadcasting Company, TruTV and In Session (e)  
Perkins, Coie, Brown & Bain, Counsel KTVK-TV (e)  
Division PTB (e)  
Victim Services (e)  
Court Administration  
Customer Service Supervisor, Verde